



UNITED STATES
ENVIRONMENTAL
PROTECTION AGENCY
REGION VIII
999 18th STREET - SUITE 300

October 21, 2004

8ENF-L

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Stan Averch, Partner
Oneida Cold Storage Company, LLP
8001 E. 88th Avenue
Henderson, CO 80640

Re: Administrative Compliance Order, Docket No.

Dear Mr. Averch:

Enclosed is an Administrative Compliance Order ("Order"), that the United States Environmental Protection Agency, Region VIII ("EPA") is issuing to you under the authority of section 113(a)(3)(B) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(a)(3)(B). In the Order, EPA finds you in violation of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and regulations set forth in 40 C.F.R. Part 68, Subpart G, pertaining to compliance with the risk management program.

The Order requires that Oneida Cold Storage Company immediately comply with all the requirements of section 112(r)(7) of the CAA, 42 U.S.C. § 7412(r)(7), and regulations set forth in 40 C.F.R. Part 68, Subpart G.

Please be advised that the issuance of this Order does not preclude the initiation of any action authorized under law for failure to comply with the Order, including the assessment of an administrative penalty and the filing of civil or criminal actions in the U.S. District Court. Failure to comply with the requirements of the Order is a violation of the Order. Please also be advised that the issuance of this Order does not preclude the initiation of administrative penalty proceedings or civil or criminal actions in the U.S. District Court for the violations cited in the Order or for any other violations that Oneida Cold Storage Company may have committed prior to or may commit after the issuance of the enclosed Order.



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Please review the Order carefully. If you have any questions, the most knowledgeable persons on my staff are Cheryl Turcotte, Environmental Scientist, (for technical issues) who can be reached at (303) 312-6210, and David Rochlin, Enforcement Attorney, (for legal issues) who can be reached at (303) 312-6892.

Sincerely,

SIGNED

Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc: David Rochlin, 8ENF-L

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8
999 18th STREET, SUITE 300
DENVER, COLORADO 80202-2466

In the Matter of :

Oneida Cold Storage Company, LLP)	Docket No. CAA-08-2005-0001
8001 E. 88 th Avenue)	CLEAN AIR ACT
Henderson, CO 80604)	42 U.S.C. § 7412(r)

ADMINISTRATIVE COMPLIANCE ORDER

Pursuant to Section 113(a)(3)(B) of the Clean Air Act, 42 U.S.C. 7413(a)(3)(B), as amended, Oneida Cold Storage Company is hereby ordered by the United States Environmental Protection Agency (EPA) to comply with the requirements of Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and the regulations promulgated thereunder and codified at 40 C.F.R. Part 68, Subpart G. Specifically, EPA Orders Oneida Cold Storage Company to submit a Risk Management Plan (RMP) to address anhydrous ammonia pursuant to 40 C.F.R. §§ 68.150.

I. Statutory and Regulatory Background

1. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r) to the Clean Air Act, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3), mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

2. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Clean Air Act. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program and an emergency response program.

3. The regulations at 40 C.F.R. Part 68 set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a Risk Management Plan (RMP) that must be submitted to EPA.

4. Pursuant to Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted for all covered processes, by an owner or operator

of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999, or the date on which a regulated substance is first present above the threshold quantity in a process.

5. Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), states that the Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$32,500 per day of violation whenever, on the basis of any available information, the Administrator finds that such person has violated or is violating any requirement or prohibition of the Clean Air Act referenced therein, including Section 112(r)(7).

II. Definitions

6. The regulations at 40 C.F.R. § 68.3 define “stationary source” as any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur. A stationary source includes transportation containers that are no longer under active shipping papers and transportation containers that are connected to equipment at the stationary source for the purposes of temporary storage, loading or unloading. The term stationary source does not apply to transportation, including the storage incident to transportation, of any regulated substance or any other extremely hazardous substance under the provisions of this Part, provided that such transportation is regulated under 49 C.F.R. Parts 192, 193 or 195. Properties shall not be considered contiguous solely because of railroad or gas pipeline right-of-way.

7. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Clean Air Act, as amended, listed in 40 C.F.R. § 68.130, Tables 1, 2, 3 and 4, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

8. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130, Tables 1, 2, 3 and 4.

9. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

III. Factual Background

10. EPA inspected the Oneida Cold Storage Company facility, located at 8001 E. 88th Avenue, Henderson, Colorado on June 16, 2004, to determine compliance with Section 112(r) of the Clean Air Act and 40 C.F.R. Part 68. Information collected as a result of this inspection revealed that the Oneida Cold Storage Company had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

11. On September 21, 2004, representatives with Oneida Cold Storage Company met with EPA to discuss the matter of non compliance with Section 112(r) of the Clean Air Act. At that meeting it was agreed to by all parties that compliance with the 112(r) program would be achieved no later than November 8, 2004.

IV. Finding of Violation

12. Oneida Cold Storage Company, Henderson, Colorado is, and at all times referred to herein, was a "person" as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

13. The Oneida Cold Storage Company facility, located at 8001 E. 88th Avenue, Henderson, Colorado is a "stationary source" pursuant to 40 C.F.R. § 68.3.

14. Anhydrous ammonia is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for anhydrous ammonia, as listed in 40 C.F.R. § 68.130, Table 1, is 10,000 pounds.

15. Between September 2003 and September 2004, Oneida Cold Storage Company had greater than 10,000 pounds of anhydrous ammonia in a process at its facility.

16. Oneida Cold Storage Company is subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

17. Oneida Cold Storage Company failed to submit an RMP for its covered processes as required by 40 C.F.R. §§ 68.150. Oneida Cold Storage Company's failure to comply with 40 C.F.R. § 68.150 is a violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

V. Compliance Order

18. By no later than November 8, 2004, EPA orders Oneida Cold Storage Company, Henderson, Colorado to submit an accurate and complete RMP to the EPA Reporting Center. A copy of the RMP shall be provided to EPA Region 8 at the following address:

U.S. EPA
999 18th Street, Suite 300

Denver, CO 80202-2466
Attn: Cheryl Turcotte, ENF-AT

19. After EPA Region 8 technical staff has reviewed the RMP, a compliance evaluation inspection will be scheduled at the Oneida Cold Storage facility.

VI. Potential Liability

20. Section 113(a)(3)(B) of the Clean Air Act grants EPA the authority to issue an Order to Comply to any person found in violation of Section 112(r) of the Clean Air Act and the regulations promulgated pursuant thereto.

21. Pursuant to Section 113 of the Clean Air Act, 42 U.S.C. § 7413, failure to comply with any of the provisions of this Order may subject Oneida Cold Storage Company to penalties of up to \$27,500 per day for each violation occurring before March 15, 2004. Violations occurring after March 15, 2004, are subject to penalties of up to \$32,500 per day for each violation.

22. Issuance of this Order does not preclude EPA from assessing penalties or taking any other action authorized under the Act. This Order does not affect the obligation of Oneida Cold Storage Company to comply with all federal, state and local statutes, regulations and permits.

23. This Order shall become effective immediately upon receipt.

24. All information and documents submitted by Oneida Cold Storage Company to EPA pursuant to this Order shall be subject to public inspection unless identified as confidential by Oneida Cold Storage Company in accordance with the requirements of 40 C.F.R. Part 2. Information and documents so identified will be disclosed only in accordance with the provisions of 40 C.F.R. Part 2.

10/20/2004
Date

SIGNED
Carol Rushin,
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON OCTOBER 21, 2004.**